



**Brazil's Compliance with the International Covenant on Civil and Political Rights:  
The Death Penalty**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996  
and

**The World Coalition Against the Death Penalty**

**for the 138th Session of the Human Rights Committee  
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**The Advocates for Human Rights** (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

**The World Coalition Against the Death Penalty** is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

## EXECUTIVE SUMMARY

1. This report addresses Brazil's compliance with its international human rights obligations with respect to the death penalty. Brazil's Constitution limits the country's use of the death penalty, and the country is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, with reservations.<sup>1</sup> This report examines the current state of the death penalty in Brazil.

### **Brazil fails to uphold its obligations under the International Covenant on Civil and Political Rights: Right to Life (List of Issues, Paragraphs 10-13)**

2. In its List of Issues, the Committee asked Brazil to comment on the country's culture of policing, allegations of enforced disappearance and the use of force by military and paramilitary groups (including police officers and former State officials).<sup>2</sup>
3. In its 12 January 2023 Reply to the List of Issues, Brazil emphasized that, under its Constitution, "Brazilians and foreigners residing in the country are ensured the inviolability of the rights to life."<sup>3</sup> Despite this recognition, the Reply notes that in 2020, more than 6,400 people were killed by State agents' intervention, with police operations in the country having a fatality rate of 80% (eight deaths for every 10 operations).<sup>4</sup>
4. On 25 September 2009, Brazil acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights.<sup>5</sup> When acceding to OP2, Brazil included a reservation pursuant to Article 2 to provide for the application of the death penalty in time of war.<sup>6</sup>
5. Brazil's Constitution limits the country's use of the death penalty, providing that "there shall be no penalties . . . of death, except in case of declared war."<sup>7</sup>
6. Brazil's Military Criminal Code sets out the crimes eligible for the death penalty in times of war. These crimes include, but are not limited to, betrayal to an enemy nation, aiding or

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<sup>1</sup> Article 5, Section XLVII(a), Constitution of the Federative Republic of Brazil. Also available online at: [https://www.constituteproject.org/constitution/Brazil\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en); UN Treaty Depository, CN Reference No. 664, Second Optional Protocol to the International Covenant on Civil and Political Rights, Accession, Brazil, United Nations, New York. Also available online at:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=_en).

<sup>2</sup> United Nations Human Rights Committee, List of issues in relation to the third periodic report of Brazil (25 August 2022). U.N. Doc. CCPR/C/BRA/Q/3, ¶¶ 10–13 .

<sup>3</sup> United Nations Human Rights Committee, Replies of Brazil to the list of issues in relation to its third periodic report (13 January 2023). U.N. Doc. CCPR/C/BRA/RQ/3, ¶ 66.

<sup>4</sup> United Nations Human Rights Committee, Replies of Brazil to the list of issues in relation to its third periodic report (13 January 2023). U.N. Doc. CCPR/C/BRA/RQ/3, ¶¶ 56–58.

<sup>5</sup> UN Treaty Depository, CN Reference No. 664, Second Optional Protocol to the International Covenant on Civil and Political Rights, Accession, Brazil, United Nations, New York. Also available online at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=_en)

<sup>6</sup> UN Treaty Depository, CN Reference No. 664, Second Optional Protocol to the International Covenant on Civil and Political Rights, Accession, Brazil, United Nations, New York. Also available online at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=_en)

<sup>7</sup> Article 5, Section XLVII(a), Constitution of the Federative Republic of Brazil. Also available online at: [https://www.constituteproject.org/constitution/Brazil\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en)

providing information to an enemy nation, desertion, espionage, cowardice, genocide, robbery, and surrender.<sup>8</sup>

7. Brazil carried out its last execution in 1855,<sup>9</sup> and there are no individuals currently on death row,<sup>10</sup> but reinstatement of capital punishment has been a topic of recent political cycles.<sup>11</sup> Notably, Brazil's former president Jair Bolsonaro made statements suggesting the possibility of reinstating the death penalty for civilian crimes.<sup>12</sup>
8. Political campaigns and statements made by various elected officials during the 2018 presidential election cycle suggested an interest in introducing the death penalty for civilian crimes. These include statements by Jair Bolsonaro, President of Brazil (2019-2022)<sup>13</sup> and Wilson Witzel, Governor of Rio de Janeiro (2019-2021).<sup>14</sup>
9. Following Jair Bolsonaro's election in 2018, military police killed hundreds of suspected criminals in low-income neighborhoods in Rio de Janeiro.<sup>15</sup> In August 2020 the Brazilian Federal Supreme Court ratified an injunction banning police operations in Rio de Janeiro for the duration of the COVID-19 pandemic, except in "absolutely exceptional cases."<sup>16</sup> Despite this ban, on May 6, 2021, more than 200 members of the Rio de Janeiro state civilian police conducted a raid on the Jacarezinho favela, which resulted in at least 25 civilian deaths.<sup>17</sup>
10. Justice Edson Fachin of Brazil's Supreme Federal Court stated that the Jacarezinho raid "could amount to arbitrary execution."<sup>18</sup> Claudio Castro, Governor of Rio de Janeiro, called the operation "the faithful fulfillment of dozens of arrest warrants,"<sup>19</sup> while then-President Bolsonaro referred to the victims as "traffickers" and congratulated the police on the

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<sup>8</sup> Articles 355 – 405, Military Criminal Code of Brazil. Also available online at: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/del1001.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/del1001.htm) (in Portuguese)

<sup>9</sup> *Countries retaining death penalty fail to give details of executions, UN says*, UN News, 14 July 2005. Also available online at: <https://news.un.org/en/story/2005/07/145092>

<sup>10</sup> World Coalition Against the Death Penalty, Brazil. Also available online at: <https://worldcoalition.org/pays/brazil/>

<sup>11</sup> *Brazil election: Bolsonaro hands out tough anti-crime message*, BBC News, 7 October 2018. Also available online at: <https://www.bbc.com/news/world-latin-america-45774849>

<sup>12</sup> *Brazil election: Bolsonaro hands out tough anti-crime message*, BBC News, 7 October 2018. Also available online at: <https://www.bbc.com/news/world-latin-america-45774849>

<sup>13</sup> *Brazil election: Bolsonaro hands out tough anti-crime message*, BBC News, 7 October 2018. Also available online at: <https://www.bbc.com/news/world-latin-america-45774849>

<sup>14</sup> Ernesto Londoño and Manuela Andreoni, *'We'll Dig Graves': Brazil's New Leaders Vow to Kill Criminals*, The New York Times, 1 November 2018. Also available online at: <https://www.nytimes.com/2018/11/01/world/americas/bolsonaro-police-kill-criminals.html>

<sup>15</sup> Ernesto Londoño and Shasta Darlington, *Brazil's Military Is Put in Charge of Security in Rio de Janeiro*, The New York Times, 16 February 2018. Also available online at: <https://www.nytimes.com/2018/02/16/world/americas/brazil-rio-military-security.html>

<sup>16</sup> *Why the Supreme Court suspend police operations in favelas of Rio de Janeiro*, Conectas Human Rights, 29 June 2020. Also available online at: <https://www.conectas.org/en/noticias/understand-what-led-the-supreme-court-to-suspend-police-operations-in-rio-de-janeiros-favelas/#:~:text=Responding%20to%20a%20request%20from,of%20the%20Covid%2D19%20pandemic.>

<sup>17</sup> *Rio de Janeiro: at least 25 killed in city's deadliest police raid on favela*, The Guardian, 6 May 2021. Also available online at: <https://amp.theguardian.com/world/2021/may/06/rio-de-janeiro-police-raid-favela-jacarezinho>

<sup>18</sup> Ricardo Brito, *Brazil judge see signs of "arbitrary execution" in Rio police raid*, Reuters, 7 May 2021. Also available online at: <https://www.reuters.com/world/americas/brazil-judge-sees-signs-arbitrary-execution-rio-police-raid-2021-05-07/>

<sup>19</sup> *Total deaths in Rio favela police raid reach 28*, MercoPress, 8 May 2021. Also available online at: <https://en.mercopress.com/2021/05/08/total-deaths-in-rio-favela-police-raid-reach-28>

operation.<sup>20</sup> These recent events, coupled with political support for extrajudicial killings of suspected criminals, suggest that Brazil may be at risk of reinstating capital punishment.

### **RECOMMENDATIONS**

11. The coauthors of this stakeholder report suggest the following recommendations for the Government of Brazil:

- Revise the Brazilian Constitution to abolish the death penalty for all crimes;
- Revise the Military Criminal Code to remove language authorizing the use of capital punishment;
- Withdraw Article 2 reservations to the Second Optional Protocol to the International Covenant on Civil and Political Rights;
- Re-commit to Brazil's abolitionist position for ordinary crimes, as recognized in the Constitution, and publicly reject calls for reinstatement of the death penalty for such crimes;
- Publicly denounce the use of lethal force by police officers in favelas as unconstitutional and in contravention of Brazil's international law obligations, and recommit to due process, the rule of law, and the right to a fair trial for all suspected criminals.

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<sup>20</sup> *Bolsonaro congratulates Rio police for Jacarezinho massacre*, MercoPress, 11 May 2021. Also available online at: <https://en.mercopress.com/2021/05/11/bolsonaro-congratulates-rio-police-for-jacarezinho-massacre>